(2006) 09 DEL CK 0132

In the Delhi High Court

Case No : Income Tax A. No. 1088 of 2005

Commissioner of Income Tax APPELLANT

Vs

Bhan Textiles P. Ltd. RESPONDENT

Date of Decision : 28-09-2006

Acts Referred:
Income Tax Act, 1961 — Section 143(2)

Citation : (2007) 208 CTR 253 : (2006) 287 ITR 370

Hon'ble Judges : Vikramajit Sen, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Prem Lata Bansal, for the Appellant; K.R. Manjani, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal was admitted on the following substantial question of law:

Whether the actual service of a notice u/s 143(2) of the Income Tax Act, 1961 as it stood before amendment, after the date prescribed in the said provision would relate back to the date of issue of the notice?

2. So far as the factual matrix of the case is concerned, the Revenue is in a worse position than that which obtained in Commissioner of Income Tax Vs. Lunar Diamonds Ltd., . Ms. Prem Lata Bansal, learned Counsel appearing on behalf of the appellant, seeks to point out that there was some doubt in CIT v. Lunar Diamonds Ltd. whether the notices had at all been sent or not. In the present case, however, it is the admitted case that the notice u/s 143(2) of the Income Tax Act though issued on November 27, 1997, and dispatched on November 28, 1997, was actually received by the assessed only on December 1, 1997. The assessed had filed the return on November 20, 1996, and, Therefore, the time stipulated under the proviso to Section 143(2)(ii) for service of notice expired on November 30, 1997. The said proviso leaves no room for debate that the notice must be served on the assessed. In CIT v. Lunar Diamonds Ltd. the

Division Bench had rejected the contention that the words "served" and "issued" are synonymous and are interchangeable. The Bench did not have the benefit of the decision of the hon''ble Supreme Court in R.K. Upadhyaya Vs. Shanabhai P. Patel, , which in fact strengthens and fortifies the position that there is a clear distinction between "issuance of notice" and "service of notice". Ms. Bansal''s reliance on Tea Consultancy and Plantation Services (India) Pvt. Ltd. Vs. Union of India (UOI) and Others, is of no avail since the word that had to be construed by the Division Bench in that case was "made" and not "issued" or "served". We see no reason to adopt an approach different to the one adopted by us in Commissioner of Income Tax Vs. Vardhman Estate P. Ltd., (I.T.A. No. 1248 of 2006) decided by us on September 25, 2006.

3. The question framed in this appeal is answered in the negative.

4. The appeal is accordingly dismissed.